

Appl. No. 10/713,636  
Atty. Docket No. CM2567C  
Amdt. dated 07/01/2005  
Reply to Office Action of 04/01/2005  
Customer No. 27752

### REMARKS

#### Claim Amendments

Claims 1-8, 10-15 are pending in the present application. Claim 9 has been previously canceled. No additional claims fee is believed to be due.

Claim 1 has been amended as shown above to recite the claimed subject matter more clearly and more particularly. Support for this amendment can be found in original claim 1 as well as at page 4, lines 23-32 of the specification.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Finality of Rejection

The Office Action of April 1, 2005 ("the previous Office Action") was made final by the Examiner. The Examiner asserts that Applicants' Amendment of January 18, 2005 ("Applicants' previous Amendment") necessitated the new grounds of rejection presented by the Examiner in the previous Office Action, thus requiring that rejection be made final. Applicants respectfully request reconsideration of the finality of the previous Office Action, and, further, that the finality of the previous Office Action be withdrawn based on the following comments.

The finality of the previous Office Action should be withdrawn because the Examiner presented a new ground of rejection, and this new ground of rejection was not necessitated by Applicants' previous Amendment. In the previous Office Action, the Examiner for the first time rejects claims 1-8 and 10-15 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner asserts that the specification gives no description with respect to the expressions "divalent organic moiety" and "monovalent organic moiety", which appear in claim 1.

The expressions "divalent organic moiety" and "monovalent organic moiety" were not introduced to claim 1 as part of Applicants' previous Amendment, even though claim 1 was amended in that Amendment. Instead, the expressions "divalent organic moiety" and "monovalent organic moiety" were present in claim 1 as originally filed.

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Therefore, Applicants' previous Amendment did not necessitate this new ground of rejection under 35 U.S.C. § 112, first paragraph.

Accordingly, the finality of the previous Office Action is premature and Applicants respectfully request that the finality be withdrawn.

#### Rejections Under 35 USC 112, First Paragraph

Claims 1-8 and 10-15 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserts that the claims contain subject matter which is not described in the specification in such a way as to reasonably convey to one of ordinary skill in the relevant art that the inventors had possession of the claimed invention at the time the application was filed. Specifically, the Examiner asserts that the specification gives no guidance to one of ordinary skill in the art with respect to chemical structures corresponding to the expressions "divalent organic moiety" and "monovalent organic moiety", which appear in claim 1. Additionally, the Examiner asserts that these expressions could encompass myriad compounds and represent only an invitation to experiment regarding possible compounds. Applicants respectfully traverse the present rejection based on the following comments.

The Examiner has not established a *prima facie* case of why a person of ordinary skill in the art at the time the application was filed would not have recognized that the inventors were in possession of the invention as claimed in view of the application as filed. *See* MPEP 2163.04. The Examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *See In re Wertheim*, 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976). Moreover, a general allegation of unpredictability is not a sufficient reason to support a rejection for lack of adequate written description. *See* MPEP 2163.04.

Applicants' invention, as currently claimed, is directed to a hair care composition comprising one or more surfactants and a polysiloxane selected from the group consisting of: (a) an aminofunctional polysiloxane (A) comprising alternating units of (i) a polysiloxane according to the claimed formula, and (ii) a divalent organic moiety comprising at least one nitrogen atom, and (iii) a monovalent organic moiety comprising at least one nitrogen atom, wherein the nitrogen atom of the monovalent organic moiety is

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located at a terminal position of the aminofunctional polysiloxane (A); and (b) mixtures of the aminofunctional polysiloxane (A) and a terminal aminofunctional polysiloxane (B) of the claimed formula. Applicants have found that the positioning of an amino group at the terminal position of the polysiloxane chain provides the polysiloxanes with improved conditioning performance versus graft amino silicone polymers, which have pendant amino groups.

Applicants provide written description of the currently claimed aminofunctional polysiloxane, including the expressions "divalent organic moiety" and "monovalent organic moiety", at pages 4-6 of the specification. Specifically, at page 4, lines 30-32 of the specification, Applicants provide that aminofunctional polysiloxane (A) of the current claims comprises a "divalent organic moiety" and "monovalent organic moiety". Although Applicants do not explicitly define the expressions "divalent organic moiety" and "monovalent organic moiety" with respective chemical structures, one of ordinary skill in the field of silicone polymers would understand the meaning and scope of these expressions in the context of the entire written description of the currently claimed invention.

At page 5, lines 12-25 of the specification, Applicants provide suitable ranges of the viscosity and the molecular weight of the claimed aminofunctional polysiloxane polymer. One of ordinary skill in the field of silicone polymers would know that the selection of a particular "divalent organic moiety" or "monovalent organic moiety" would affect parameters such as viscosity and molecular weight.

Additionally, at page 6, lines 1-2 of the specification, Applicants indicate that the aminofunctional polysiloxanes of the present invention can be prepared utilizing methods known to one of ordinary skill in the silicone polymer industry. At page 6, lines 13-18, Applicants further describe preparation of a terminal amino silicone polymer, indicating that the choice of the amine modified monomer dictates the positioning of the amine functionality on the final polymer.

As described above, Applicants have found that it is the positioning of an amino group at the *terminal position* of the polysiloxane chain which provides the benefit of improved conditioning performance. Thus, provided that the currently claimed aminofunctional polysiloxane (A) comprises a terminal amino group, the "divalent

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organic moiety" and "monovalent organic moiety" may be any suitable chemical structure known to one of ordinary skill in the field of silicone polymers.

The Examiner has failed to present any evidence that the meaning and scope the expressions "divalent organic moiety" and "monovalent organic moiety" would not be understood by one of ordinary skill in the field of silicone polymers in view of the written description of the present application in its entirety. Rather, the Examiner merely makes a general allegation that these expressions are an invitation to experiment. Accordingly, the Examiner has not met the required burden to establish a *prima facie* case of why a person of ordinary skill in the art at the time the application was filed would not have recognized that the inventors were in possession of the invention as claimed in view of the application as filed.

Therefore, Applicants' claims 1-8 and 10-15 comply with the written description requirement of 35 U.S.C. § 112, first paragraph. In addition, Applicants' claims 1-8 and 10-15 are novel and nonobvious over any prior art of record.

#### CONCLUSION

In light of the amendments and remarks presented herein, it is requested that the Examiner reconsider and withdraw the present rejections. Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-8 and 10-15.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By



Signature

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